2019 IL App (1st) 161693-U

THIRD DIVISION
April 3, 2019

No. 1-16-1693

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 18965
	)	
RICHARD ASCENCIO,	)	The Honorable
	)	James N. Karahalios,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

ORDER

HELD: Upon concession of State, strict compliance with Rule 604(d) was not had in this cause, and we reverse the trial court's denial of defendant's motion to withdraw his guilty plea and remand for new postplea proceedings in strict compliance with Rule 604(d). Also upon concession of State, we correct defendant's mittimus to reflect a total of 205 days of presentence custody credit. However, we hold that remand in this matter is to take place before the same trial judge.

¶ 1 Following the entry of a guilty plea, defendant-appellant Richard Ascencio (defendant) was sentenced to 20 years in prison. He later filed a *pro se* motion to withdraw his guilty plea

and vacate his sentence, which the trial court denied. Defendant appeals, contending that strict compliance with the mandates of Illinois Supreme Court Rule (Rule) 604(d) (Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016)) did not take place in his cause. He asks that we vacate the trial court's denial of his motion to withdraw his guilty plea and remand for new proceedings on his postplea motions in strict compliance with the rule; he further insists that such proceedings should take place before a different judge, as the trial court herein was exposed to and relied on inflammatory evidence in sentencing him. Defendant also asks that we correct his mittimus with respect to the amount of presentence custody credit to which he is entitled, that is, 205 days.

¶ 2 For its part, the State concedes both that strict compliance with Rule 604(d) was not followed and that defendant's mittimus must be corrected as he suggests. However, it disagrees that defendant's cause must be sent to a different judge upon remand. Rather, it insists that remand to a different judge is unwarranted because defendant has failed to show the required judicial bias necessary for such a remedy, as is his burden.

¶ 3 For the following reasons, we reverse the trial court's denial of defendant's motion to withdraw his guilty plea and remand to the same trial judge for new postplea proceedings in strict compliance with Rule 604(d). Additionally, we correct defendant's mittimus to reflect a total of 205 days of presentence custody credit.

¶ 4 BACKGROUND

¶ 5 Defendant was charged with six counts of aggravated criminal sexual abuse with respect to various types of sexual contact between him and the victim, I.L.: counts 1-3 specified contact during the period from October 1, 2105 through October 18, 2015, and counts 4-6 specified

contact during the period from June 4, 2014 through June 30, 2015. All six counts alleged that, at the time of the contact, I.L. was at least 13 years old but less than 17 years old and defendant was at least five years older than I.L.

¶ 6 In January 2016, after admonishing defendant and obtaining his confirmation that he understood what was going on, the trial court held an off-record Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997)) conference with the State and the defense. After this conference, the trial court indicated for the record that a plea offer had been made wherein defendant would received 10 years in prison in exchange for a plea of guilty. The court continued the cause for one month to allow defendant to consider the offer.

¶ 7 In February 2016, the parties appeared in court. At the outset of the proceeding, defense counsel told the court that defendant had "decided to no longer retain [him] as his attorney." The court acknowledged this, and then reminded the parties that they had already had a Rule 402 conference and an offer had been presented. After reiterating the offer, the court asked defendant directly if defense counsel had notified him of the offer and had explained it to him; defendant confirmed that he had. The court then explained to defendant that the State would withdraw the offer if he did not accept it, and it allowed the State to explain that, due to his criminal background, defendant was eligible for mandatory Class X sentencing of up to 30 years in prison. After confirming with defendant that he understood all of this and noting that he had "a month to think about these things and to thrash them out," the court asked defendant if he would accept the offer. Defendant replied that he would not, and the trial court stated for the record that "the offer is withdrawn." The court then continued the matter "for status on defendant retaining other

counsel," as well as some outstanding discovery.

¶ 8 In March 2016, the parties again appeared in court. At the outset of this proceeding, defense counsel asked the trial court if defendant could now take the plea, as was offered. The trial court responded by stating that the plea had been withdrawn and that the only issue remaining at this point was whether defendant would be keeping defense counsel or retaining other counsel, as he indicated at the last hearing. Defendant told the court he would be keeping defense counsel to represent him. Defense counsel then asked the court to "reconsider having another 402" conference because defendant had been unable to confer with his father about the plea offer at the time, but now, having had a chance to speak to him, defendant realized the offer had been fair. After reviewing what occurred, the court declined to hold another conference, stating that "[o]nce an offer is withdrawn, it is withdrawn." However, the court allowed defense counsel to confer with defendant about a possible blind plea, after which defendant agreed to accept such an offer. The matter was once again continued.

¶ 9 On May 11, 2016, the parties appeared in court for entry of the blind plea. The State *nolle prossed* counts 2 through 6 against defendant, proceeding only on count 1 which, again, was for aggravated criminal sexual abuse specifying contact with the victim during October 1, 2015 through October 18, 2015. After confirming for the record he knew the potential Class X 30-year sentence as well as his various legal rights, defendant entered a plea of guilty as to count 1. The court then asked the State to present the factual basis of the plea, and the State recited the following:

> "If this case were to proceed to trial, the evidence would show that on or about

October 1st continuing through October 18th of 2015 the defendant and the victim were involved in a dating relationship. I.L. would testify that beginning in June of 2014 when she was 13 turning 14 and at the time the defendant was 23 turning 24, they began to have a relationship. The defendant and the victim began to have a sexual relationship when the victim turned 13 and the defendant was 23. They had sexual intercourse at the victim's home when she and her family lived with her grandmother. They also had it at the house on Norman where they live currently and also at defendant's house in Wheeling, Cook County, Illinois. The defendant and the victim engaged in oral sex where the defendant would put his penis in the victim's mouth as well as the defendant would put his mouth on the victim's vagina. The victim out cried to a school counselor and subsequently contacted the victim's mother.

In June of 2015 the victim got pregnant and when she learned she was pregnant she let the defendant know. The police were involved at this point and the defendant fled to Mexico.

On July 17th of 2015, the victim went to Planned Parenthood on the north, the North Health Center Medical Clinic and on that date she had an abortion. The fetal tissue was collected and it was put in a, it was collected by all proper procedures and it was tendered to the Wheeling Police Department where it was subsequently sent to the crime lab.

If called to testify, forensic scientist Sarah Owen would testify that in 2015 she worked at the Northeastern Illinois Regional Crime Lab where she was a forensic

scientist. She would testify that she would be qualified as an expert in the area of forensic biology. She would testify that she had a swab from, with a known standard taken from the defendant as well as, I'm sorry, a swab with saliva that was taken from the defendant Richard Ascencio. She would also testify that she had a box containing a swab with a known saliva standard from the victim I.L. She would further testify that she had the fetal tissue that was recovered from Planned Parenthood. She would testify that after performing all tests and following proper procedure and protocol the probability that the defendant is the biological parent of the, the biological parent of the fetal tissue was approximately 99.999 percent. All chain of custody was followed at all times.

The Wheeling Police Department put out an investigative alert for the defendant in July of 2015. The defendant subsequently returned from Mexico and he again engaged in sex with the victim and that would have occurred between the dates of October 1st of 2015 through October 18th of 2015. The product of the defendant's penis inside the victim's vagina led to the victim again being pregnant. The victim who is now 16 is currently pregnant with the defendant's child.

The defendant was arrested in October of 2015, specifically October 19th of 2015. After being Mirandized the defendant admitted that he knew the victim's age was between the ages of 13 and 14 when they first began to have sexual relations. He admitted that he put his penis inside of her vagina as well as them engaging in oral sex. He admitted that he knew it was wrong because of her age."

Defense counsel stipulated to this factual basis as presented by the State, and defendant told the

court that he agreed with his counsel's stipulation to the facts. After finding that there was a sufficient factual basis for his plea and that it was entered knowingly and voluntarily, the trial court entered a finding of guilt on count 1.

¶ 10 The cause proceeded immediately to sentencing, and the court heard argument in aggravation and mitigation. In aggravation, the State presented defendant's lengthy criminal history and his Class X status. Then, the State turned to the facts of the instant cause and stated:

> "However, more aggravating than that is not only the fact of this case with the defendant knowingly after knowing what he did was wrong and fleeing to Mexico knowing that the victim had an abortion, he came back and impregnated her again. I find that extremely aggravating."

The State also cited defendant's continuous violation of an order of protection prohibiting contact with I.L. It noted that because of all this, defendant deserved "so much more" than the minimum and asked the trial court to sentence him accordingly.

¶ 11 In mitigation, defense counsel told the court that, although his actions cannot be excused, defendant and I.L. were in love and he was prepared to help her and support the baby, as would his family; they planned on getting married. Defense counsel also asked the court to remember the original 10-year plea offer. Additionally, defendant spoke to the trial court on his own behalf, accepting responsibility and punishment for the crime, expressing regret and remorse, and describing that he hoped to be out of prison soon so he could end his string of mistakes and take care of his child, his wife-to-be and his ill parents.

¶ 12 After argument, the court entered defendant's sentence. In doing so, the judge

acknowledged that while defendant's crime was not violent in the traditional sense, "this child [I.L.] was violated" in many ways, including psychologically and emotionally, and that she had been robbed of many things, including her youth and her relationship with her family. He further stated:

> "And not only was the first act, well, all of it is reprehensible; but to impregnate her once and then she gets an abortion and he flees the jurisdiction and then comes back and then to impregnate her again is outrageous. You cannot expect a child of her age to even begin to comprehend the consequences of these things that will stay with her for the rest of her life."

The court further noted that defendant had enough experience with the penitentiary "to understand the consequences of his actions and the ramifications" and there was "no reason why he shouldn't get 30 years." However, the court did take the situation described in mitigation "to heart" and, thus, sentenced defendant to 20 years in prison followed by 3 years of mandatory supervised release and lifetime sex offender registration. The court then admonished him of his postplea rights, including the filing of a motion to withdraw his guilty plea, and awarded him 95 days of presentence custody credit.

¶ 13 On May 25, 2016, defendant filed a *pro se* motion to withdraw his guilty plea. In support of his motion, defendant wrote only that he was presently incarcerated. The trial court held a hearing on defendant's motion. There is no indication in the record that defendant was present for the hearing and, while the face sheet of the report of proceedings lists defense counsel's name, there is no indication that he was present for this hearing, either. The very brief transcript of the

proceeding shows only that the court stated it reviewed defendant's motion to withdraw his guilty plea and that his motion listed no grounds in support of the withdrawal. The court therefore denied defendant's motion, finding that it was "legally insufficient."

¶ 14 ANALYSIS

¶ 15 On appeal, defendant makes three contentions. First, he contends that strict compliance with the requirements of Rule 604(d) were not followed in his cause, for two reasons. He asserts that the trial court could not have so complied where there is no indication in the record that defendant was present for the ruling on his *pro se* motion to withdraw his guilty plea and, even if he was, the trial court failed to admonish him in any way (*i.e.*, to determine if he had or wanted counsel). And, he asserts that, even assuming defense counsel was present at that hearing (about which the record is not at all clear), counsel failed to file a Rule 604(d) certificate, as required. Second, defendant contends that, when his cause is remanded for strict compliance, it should be remanded for postplea practice before a different judge. In this respect, he asserts that the instant trial court was exposed to inflammatory and irrelevant evidence upon which it relied in sentencing him and, while it was without fault in this exposure, there may well be prejudgment on remand. Third, defendant contends that a correction must be made to his mittimus, as there was a miscalculation in the presentence custody credit to which he is entitled.

¶ 16 As we noted at the outset of our decision here, the State concedes both defendant's first and third contentions on appeal.

¶ 17 That is, first, the State concedes, and we agree with defendant, that the trial court's denial of his *pro se* motion to withdraw his guilty plea must be vacated and his cause remanded for new

postplea proceedings in strict compliance with Rule 604(d). Briefly, Rule 604(d) places requirements on both the trial court and defense counsel when a defendant files a postplea motion to withdraw his guilty plea. With respect to the trial court, the rule requires it to determine whether the defendant is represented by counsel, and if he is indigent or desires counsel, the court is to appoint counsel for him. See Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). The rule obligates the trial court to make these inquiries and appoint counsel regardless of whether the defendant makes such a request, unless it secures a knowing waiver from him. See *People v. Smith*, 365 Ill. App. 3d 356, 359 (2006). The trial court must strictly comply with these mandates, and its failure to do so will result in reversal of its denial of the defendant's postplea motion and remand for new postplea proceedings and strict compliance with the rule. See *Smith*, 365 Ill. App. 3d at 361, citing *People v. Janes*, 158 Ill. 2d 27, 34 (1994). With respect to defense counsel, Rule 604(d) requires that he file a certificate with the trial court stating that he has consulted with the defendant regarding contentions of error in sentencing and the entry of his guilty plea, has examined the court file and has made any necessary amendments to the defendant's motion. See Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013); *People v. Tousignant*, 2014 IL 115329, ¶¶ 16, 20. Just as the trial court, defense counsel must strictly comply with the rule and if the record shows strict compliance was not had, remand is necessary to allow the defendant to file a new postplea motion. See *Tousignant*, 2014 IL 115329, ¶ 20; see also *Janes*, 158 Ill. 2d at 35.

¶ 18 In the instant cause, defendant points out, and we too acknowledge, that the record fails to demonstrate any sort of colloquy between the trial court and defendant at the hearing on his

motion to withdraw his guilty plea. In fact, it is not evident that he was even present, as no mention of his presence is ever made at the hearing. All the record shows is that the trial court, without consulting with defendant about the status of his representation status or his desire for counsel, made a determination on the face of his motion that it was "legally insufficient" because it stated only that he was currently in prison. The trial court's action here was not at all in compliance with the requirements imposed upon it by Rule 604(d). Moreover, the parties agree, as do we, that the record is entirely unclear as to whether defense counsel was present at this hearing. The face sheet of the proceeding lists his name, but the court never addressed him or acknowledged his presence in open court. More importantly, however, there is no certification by counsel anywhere in the record to show that he communicated with defendant or performed the tasks required of him pursuant to Rule 604(d). Again here, strict compliance was not followed. Accordingly, we join with the parties and vacate the trial court's denial of defendant's motion to withdraw his guilty plea and remand to allow him the opportunity to file a new postplea motion and participate in a hearing on that motion in strict compliance with Rule 604(d).

¶ 19 Next, the State concedes, and we agree with defendant, that his mittimus must be corrected. Pursuant to Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615) (eff. Aug. 27, 1999), a reviewing court on appeal may correct the mittimus at any time, without remanding the cause to the trial court for this purpose. See *People v. Rush*, 2014 IL App (1st) 123462, ¶ 36. A defendant is entitled to credit for any part of a day he spends in custody prior to sentencing, not including the day of sentencing. See *People v. Smith*, 258 Ill. App. 3d 261, 267 (1994). As

defendant points out, and as confirmed by the record, he was arrested on October 19, 2015 and he was sentenced on May 11, 2016; he was in continuous custody for a total of 205 days. However, the trial court inaccurately awarded him presentence custody credit for only 95 days. Therefore, we correct his mittimus to reflect an additional 110 days, for a total of 205 days' presentence custody credit.

¶ 20 This leaves, then, one contested issue for our review.

¶ 21 Defendant contends that, when his cause is remanded for strict compliance with Rule 604(d), it should be remanded for postplea motion practice before a different judge. He claims that the instant trial judge was improperly exposed to inflammatory information which he insists was irrelevant to the charge to which he pled guilty and upon which he asserts the judge "expressly relied" in imposing his sentence. We disagree.

¶ 22 We, as a reviewing court, have the power to reassign a matter to a different trial judge upon remand. See Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). However, certain considerations must be seriously weighed, since " '[t]o conclude that a judge is disqualified because of prejudice is not, of course, a judgment to be lightly made.' " *People v. Burnett*, 2016 IL App (1st) 141033, ¶ 56 (quoting *People v. Vance*, 76 Ill. 2d 171, 179 (1979)).

¶ 23 A trial judge is presumed to be impartial. See *Burnett*, 2016 IL App (1st) 141033, ¶ 56; accord *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). The burden of overcoming this presumption lies with the party making a charge of prejudice. See *Burnett*, 2016 IL App (1st) 141033, ¶ 56; see also *Thomas v. Weatherguard Construction Co., Inc.*, 2018 IL App (1st) 171238, ¶ 48 (this "is a heavy burden"). A trial judge's rulings, alone, are almost never a valid

basis upon which a claim of judicial bias or partiality may be substantiated. See *Burnett*, 2016 IL App (1st) 141033, ¶ 56; accord *Eychaner*, 202 Ill. 2d at 280 (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994)) (even a judge's allegedly erroneous findings or rulings are an insufficient basis). "Also, it is clear that ordinarily the fact that a judge has ruled adversely to a party in either a civil or criminal case does not disqualify that judge from sitting in subsequent civil or criminal cases in which the same person is a party." *Eychaner*, 202 Ill. 2d at 280 (citing *Vance*, 76 Ill. 2d at 178); accord *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31.

¶ 24 Instead, the party asserting prejudice must present evidence of prejudicial conduct on the part of the trial judge as well as evidence of the judge's personal bias. See *Burnett*, 2016 IL App (1st) 141033, ¶ 56; accord *Eychaner*, 202 Ill. 2d at 280; see also *O'Brien*, 2011 IL 109039, ¶ 30 (what is required is a showing of actual prejudice). This evidence can be from an extrajudicial source or revealed in the record itself from the facts adduced or the events occurring at trial. See *Eychaner*, 202 Ill. 2d at 280. In such latter instances, as herein, it must be remembered that opinions formed by the trial judge upon facts introduced or events occurring during proceedings before him cannot form the basis for partiality or bias " 'unless they display a deep-seeded favoritism or antagonism that would make fair judgment impossible.' " *Eychaner,* 202 Ill. 2d at 281 (quoting *Liteky*, 510 U.S. at 555). That is,

> " 'judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree

> of favoritism or antagonism as to make fair judgment impossible.' " *Eychaner*, 202 Ill. 2d at 281 (quoting *Liteky*, 510 U.S. at 555.

These are the only exceptions. See *Eychaner*, 202 Ill. 2d at 281; accord *Thomas*, 2018 IL App (1st) 171238, ¶ 49.

¶ 25 In the instant cause, defendant does not cite any extrajudicial source of prejudice on the part of the trial judge but, rather, only certain comments from his colloquy as described herein. Upon review, the circumstances to which defendant refers as evidence of judicial bias do not display such deep-seeded favoritism or antagonism that would make fair judgment impossible. Thus, we hold that remand to a different judge is unwarranted.

¶ 26 Defendant phrases his argument in this way. As its foundation, he explains that during the presentation of the factual basis for defendant's guilty plea, the State went into too much detail, providing facts extraneous and irrelevant to the single count to which defendant was pleading guilty. These facts, as cited by defendant, are the oral sex between him and the victim and the victim's first pregnancy and abortion, as well as the collection of the fetal tissue and determination that defendant was the father all of which occurred two months before (June 2014 through July 2015) the period at issue (October 1 through 18, 2015).[1] Defendant then continues by arguing that, with the State calling this "extremely aggravating," the judge picked up on these inflammatory details, as evidenced by his references to, particularly, I.L.'s abortion and his use of the terms "reprehensible" and "outrageous" in his colloquy. Defendant claims that, since the

[1]This earlier time period formed the basis for the counts against defendant that were *nolle prossed* by the State.

State needed only to present the most basic of facts to substantiate the plea (*i.e.*, that defendant and victim knew each other, defendant knew the victim's age, he was at least five years older than her, he had sex with her on the dates specified, and he knew this was wrong because of her age), and since the judge was exposed to and adopted unnecessary information unrelated to count 1, the judge cannot, at this point, be impartial upon remand.

¶ 27 First, defendant fails to cite any legal precedent, and we find none, describing what exactly the State may present when it is called upon by the trial court to provide the factual basis for a defendant's guilty plea. In other words, there is no requirement, as defendant clearly would have preferred here, that the factual basis presented for the record before the trial court be reduced to only the most bare-bone of facts to support the crime charged. To the contrary, there is obviously something to be said about a trial court obtaining information in this context as a whole before allowing a defendant to plead guilty and skip the safeguards inherent in a trial setting, which is what occurred here and in all those cases where a guilty plea is accepted in lieu of a trial. Ultimately, the only express rules in our legal precedent are these: a court may not enter final judgment on a plea of guilty without first determining there is a factual basis for that plea; what is required for this is a basis from which the court can reasonably conclude that the defendant committed the crime to which he is pleading guilty and had the required intent; and the trial court must confer with defense counsel that the evidence presented at a would-be trial is substantially as indicated. See *In re C.J.*, 2011 IL App (4th) 110476, ¶¶ 50-54 (once these are met, the court has fully complied with the requirements surrounding the acceptance of a defendant's guilty plea). Defendant cites no authority to state that providing something more

than the most naked of information is error. See, *e.g.*, *C.J.*, 2011 IL App (4th) 110476, ¶ 55 (where the State provided "substantially more than the minimum amount of evidence required to support" the defendant's guilty plea, the trial court's acceptance of that plea was appropriate).

¶ 28 Additionally, in the instant cause in particular, it cannot be ignored that defendant stipulated to the very presentation of the factual basis for his plea he now argues on appeal was improper. The record is abundantly clear that, after the State's recitation and before the facts were accepted by the trial court, defense counsel stipulated to the presentation in its entirety. The trial court then turned to defendant and asked him directly if, after hearing the State's presentation of the factual basis for his plea, he agreed with defense counsel's decision to so stipulate. Defendant directly and unequivocally answered that he did. Some would say that, at this point, it would be improper to even entertain defendant's argument here. See *People v. Muhammad*, 398 Ill. App. 3d 1013, 1017 (2010) (a defendant's ability to challenge on appeal his stipulation to evidence in proceeding below is affirmatively waived because he has expressly procured, invited or acquiesced in the admission of that evidence and in any resulting error that may occur).

¶ 29 Finally, apart from all this, and addressing defendant's concerns here, our review of the record shows that defendant wholly fails in his burden to demonstrate the requisite actual prejudice on the part of the trial court to merit remand to a different judge. Defendant's main argument is that the State referred to I.L.'s abortion, which occurred outside the dates charged, as "extremely aggravating" and that the judge accepted this and similarly referred to it as "reprehensible" and "outrageous." However, defendant mischaracterizes the record on both

fronts. For its part, the State did not refer to the abortion itself as "extremely aggravating." Rather, it used this phrase at the end of its argument in aggravation referring to the facts of the cause as a whole, and only after stating what those facts were namely, that defendant, knowing that his conduct with the victim was wrong, fled to Mexico, knew I.L. got an abortion, and then returned and impregnated her again. Clearly, the State found "extremely aggravating" defendant's recidivism against the victim, not the victim's abortion.

¶ 30 Moreover, the trial judge did not refer to the victim's abortion as "reprehensible" and "outrageous." Upon reading the judge's colloquy, it is quite evident that, in using these words, he was referring to the nature of defendant's relationship with the victim, who was, by law, a child a fact which defendant admitted he knew and, more importantly, knowing he was at least five years older than her, admitted he knew was wrong. For this trial judge, the crux of his colloquy and the primary reasoning for the sentence he imposed was the fact that the victim here was a child who had been violated by defendant in several ways and "robbed of many things" physically, psychologically and emotionally. Thus, what he coined as "reprehensible" and "outrageous" was defendant's behavior towards her, not the fact that an abortion had a part in what occurred. In fact, the judge barely mentioned the abortion (an otherwise undeniable fact in the context of this cause and a direct result of defendant's crime). While he clearly disapproved of defendant's actions against the victim, he certainly did not discuss his personal views on abortion (either for or against), as defendant implies. Even had he done so (which he did not), as we have already discussed, opinions formed by a trial judge upon facts introduced or events occurring during proceedings before him cannot form the basis for partiality or bias,

unless they display a deep-seeded favoritism or antagonism that would make fair judgment impossible. Upon our review of the record, this is not at all evident here. Ultimately, without more, defendant's argument cannot stand and we find no reason to order that our remand for postplea proceedings take place before a different trial judge.

¶ 31 CONCLUSION

¶ 32 Accordingly, for all the foregoing reasons, we reverse the trial court's denial of defendant's motion to withdraw his guilty plea and remand to the same judge for new postplea proceedings in strict compliance with Rule 604(d), with a correction to defendant's mittimus to reflect a total of 205 days of presentence custody credit.

¶ 33 Reversed and remanded to the same trial judge; mittimus corrected.